

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**MARIA BARRON,
Plaintiff,**

v.

**MOHAMMED HOSSAIN AND SPEEDY
UNITED USA, INC. D/B/A KING
WASH & DRY AND D/B/A
RUB-A-DUB DUB
Defendant.**

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Civil Action No. 3:17-cv-03468-N

FIRST AMENDED ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIM

TO THE HONORABLE COURT:

COMES NOW Mohammed Hossain and Speedy United USA, Inc. (collectively “Defendants”), and files and serves their First Amended Answer, Affirmative Defenses and Counterclaim to the claims asserted by Maria Barron (“Plaintiff”) and would respectfully show this Court the following:

I.

ANSWER TO PLAINTIFF’S COMPLAINT

A. Admissions and Denials

1. Insofar as ¶ 1 of the Complaint makes factual allegations, Defendants deny any and all such allegations.
2. Defendants admit the allegations of ¶ 2 of the Complaint.
3. Defendants admit the allegations of ¶ 3 of the Complaint.
4. Defendants admit the allegations of ¶ 4 of the Complaint.

5. Insofar as ¶ 5 of the Complaint makes factual allegations, Defendants deny any and all such allegations.

6. Defendants admit the allegations of ¶ 6 of the Complaint.

7. Defendants deny the allegations of ¶ 7 of the Complaint.

8. Defendants deny the allegations of ¶ 8 of the Complaint.

9. Defendants deny the allegations of ¶ 9 of the Complaint.

10. Defendants deny the allegations of ¶ 10 of the Complaint.

11. Defendants deny the allegations of ¶ 11 of the Complaint.

12. Defendants deny the allegations of ¶ 12 of the Complaint.

13. Defendants deny the allegations of ¶ 13 of the Complaint.

14. Defendants deny the allegations of ¶ 14 of the Complaint.

15. Defendants deny the allegations of ¶ 15 of the Complaint.

16. Defendants deny the allegations of ¶ 16 of the Complaint.

17. Defendants deny the allegations of ¶ 17 of the Complaint.

18. Defendants deny the allegations of ¶ 18 of the Complaint.

19. Defendants deny the allegations of ¶ 19 of the Complaint.

20. Defendants deny the allegations of ¶ 20 of the Complaint.

21. Defendants deny the allegations of ¶ 21 of the Complaint.

22. Defendants deny the allegations of ¶ 22 of the Complaint.

23. Defendants deny the allegations of ¶ 23 of the Complaint.

24. Defendants deny the allegations of ¶ 24 of the Complaint.

25. Defendants deny the allegations of ¶ 25 of the Complaint.

26. Defendants deny the allegations of ¶ 26 of the Complaint.

27. Defendants deny the allegations of Section VII and the relief sought.

B. Affirmative Defenses

23. Defendants hereby re-allege and re-state all denials, allegations, and affirmative defenses previously made herein, and in addition raises the following affirmative defenses, and to the extent any of the following affirmative defenses may be viewed as in any way inconsistent, they are pleaded in the alternative:

(1) First Affirmative Defense

Plaintiff lacks standing and/or is otherwise unable to assert these claims as she was never an employee of Defendants under the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. (“FLSA”) and the Texas Minium Wage Act, Chapter 62 Tex. Labor Code (“TMWA”).

(2) Second Affirmative Defense

Without admitting liability, Defendants affirmatively state that Plaintiff has failed to mitigate any damages she may have suffered, if any.

(3) Third Affirmative Defense

Plaintiff’s claims are barred, in whole or in part, by the doctrines of unclean hands, waiver, estoppel, and/or laches.

**II.
COUNTERCLAIM**

The Defendants, without waiving any of the above-described affirmative defenses, states the following by way of Counterclaim against the Plaintiff herein pursuant to Fed. R. Civ. P. 13.

A. Count One: Declaratory Judgment

24. Defendants incorporate the above paragraphs as if fully set forth herein.

25. Defendants bring this claim for a declaratory judgment under both Fed. R. Civ. P. 57 and 28 U.S.C. §§ 2201, 2202.

26. Defendants request that the Court declare that they never employed Plaintiff within the meaning of FLSA and the TMWA.

27. Defendants are entitled to and seeks costs and reasonable and necessary attorneys' fees as are just and equitable.

B. Count Two: Texas Theft Liability Act

31. Defendants incorporate the above paragraphs as if fully set forth herein.

32. Pursuant to Tex. Civ. Prac. & Rem. Code §§ 134.001-.005, Plaintiff committed theft by absconding with Defendants' funds and using them for her benefit.

33. Plaintiff's actions were in violation of Texas Penal Code § 31.03, and Defendants' sustained damages as a result of Plaintiff's theft. Defendants seek actual damages from Plaintiff to remedy Plaintiff's wrongful actions.

34. Defendant sues for all other additional damages pursuant to the Texas Theft Liability Act, including but not limited to attorneys' fees and court costs pursuant to Tex. Civ. Prac. & Rem. Code § 134.005(b) and fines pursuant to § 134.005(a)(1).

35. Exemplary damages. Defendants' injury resulted from Plaintiff's actual fraud, gross negligence, or malice, which entitles Defendants to exemplary damages under Tex. Civ. Prac. & Rem. Code § 41.003(a).

**III.
JURY TRIAL DEMAND**

36. Pursuant to Fed. R. Civ. P. 38(b), Defendants demands a jury trial on all issues so triable.

WHEREFORE, the Defendants Mohammed Hossain and Speedy United USA, Inc. pray that Plaintiff Maria Barron take nothing by way of her Complaint and that this Court award Defendants their costs, attorney's fees and all other proper relief.

Dated: February 19, 2018

Respectfully submitted,

/s/ Michael R. Goldman

Michael R. Goldman

State Bar No. 24025383

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**ATTORNEY FOR DEFENDANTS
MOHAMMED HOSSAIN AND SPEEDY
UNITED USA, INC.**

CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on this 19th day of February, 2018.

/s/ Michael R. Goldman

Michael R. Goldman